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HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 224 of 2006

National Insurance Company Limited through its Divisional Manager, Divisional Office, GE Road, Babla Complex, Raipur (CG).

---- Appellant

Versus

1. A. Smt. Usha Dhruv, aged about 33 years, Wd/o Late Than Singh Dhruv,
   B. Divya Dhruv, aged about 17 years, D/o late Than Singh Dhruv.
   C. Mukesh Dhruv, aged about 14 years, S/o late Than Singh Dhruv.
   D. Rakesh Dhruv, aged about 10 years S/o late Than Singh Dhruv.
   All are R/o Chandrashekhar Azad Ward No.27, Parmeshwari Nagar, Near Kanha Medical Store, Nagriya Nikay, Beergaon, Distt. Raipur (CG).
2. Puran Chand Naik S/o Laxman Naik, through Bhansali roadways Tatibandh, PS Amanaka, Tah. & Distt. Raipur (CG).
3. Prakash Jain S/o Nemichand Jain, through Bhansali roadways Tatibandh, PS Amanaka, Tah. & Distt. Raipur (CG).
4. Kishor Kumar Mohna S/o Mangal Das Mohna, through Bhansali roadways Tatibandh, PS Amanaka, Tah. & Distt. Raipur (CG).

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate.
For respondents No.2to4: Shri Malay Kumar Bhaduri, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

13/07/2017

1. The present is an appeal by the insurance company under Section 173 of the Motor Vehicles Act assailing the award dated 18.11.2005 passed by the 10th Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.60/2004. Vide the impugned award the Tribunal has awarded an amount of Rs.1,50,900/- as compensation to the claimant for the injuries sustained by him from

an accident that took place on 06.08.2000 holding the insurer of the offending Truck liable for payment of compensation. On the said date, the Truck was being owned by respondent No.3 and driven by respondent No.2. It is the appeal by the insurance company alleging only the liability which has been fastened upon the insurance company.

2. Learned counsel for the appellant submits that the owner of offending vehicle did not have a policy of the said vehicle at all on the date of accident and that the Tribunal has not properly appreciated the evidence which have come on record while fastening the liability upon the appellant-insurance company. According to him, it was specifically pleaded before the Tribunal that the insurance company had not insured the said vehicle and that there was no policy issued by the insurance company indemnifying the Truck belonging to the respondents.

3. It was further contended that the sole ground of fastening liability upon the insurance company by the Tribunal was an entry which was found in the criminal case registered against the driver where in the seizure memo it was written that the vehicle was insured with the National Insurance Co. Ltd. i.e. the present appellant. In addition to this, there was no other piece of evidence brought on record nor produced by the owner and driver of the vehicle during the course of trial with which it can be said that the vehicle was duly insured with the appellant. It was further contended that the Tribunal in the course of proceeding on 11.11.2003 had specifically ordered the owner and

driver to produce the policy in respect of vehicle involved in the accident, but inspite considerable opportunity being granted, the owner and driver could not produce either original policy or even a photo copy of the same nor were they able to give even the details of policy with which also at least the liability of insurance company could have been verified or ascertained. Thus, in the given factual matrix of the case, the counsel for the appellant-insurance company prayed for discharging of liability of the insurance company by modifying the award suitably.

4. Learned counsel appearing for the respondent-owner submitted that the award does not warrant any interference as it is a speaking order based upon the evidence which have come on record. Since the liability was fastened upon the insurance company on the basis of entries made in the criminal record, it cannot be found fault at and the appeal thus deserves to be rejected.

5. Having considered the rival contentions put forth on either side and on perusal of records, if we look into the provisions of law, Section 134(c) of the Motor Vehicles Act clearly envisages the requirement of the insured at the time of filing of claim case. The relevant portion of said Section speaks as under:

> "134 (c). **Duty of driver in case of accident and injury to a person-**
>
> xxxx xxxx xxxx
> xxxx xxxx xxxx
>
> (c) give the following information in writing to the insurer, who has issued the certificate of insurance, about the occurrence of the accident, namely-

(i). insurance policy number and period of its validity;
(ii) date, time and place of accident;
(iii) particulars of the persons injured or killed in the accident;
(iv) name of the driver and the particulars of his driving licence.
Explanation:-For the purpose of this section, the expression “driver” includes the owner of the vehicle.”

6. A perusal of said provision of law clearly indicates that it was mandatory for the claimants or for that matter the owner and driver to provide necessary details so far as insurance policy is concerned. Unless the details are provided, it would be difficult for the insurance company to verify so far as its liability is concerned.

7. In the present case, what also strikes the mind of this court is the fact that the Tribunal itself vide order dated 11.11.2003 had ordered the driver and owner for production of a copy of policy so that it can be ascertained and verified during the course of trial itself. But, in spite of ample opportunity being granted, the respondents could not produce the same. In the peculiar facts and circumstances of the case where the respondent owner and driver in spite of opportunity being granted, refused or failed to produce the details of the policy, the safest inference which can be drawn is that the vehicle was not insured with the appellant at the relevant point of time. Though the Tribunal has referred to the entry made in the seizure memo of the criminal case, but it did not care to see whether the records of the criminal case did have the copy of insurance policy except the reference that it was insured with the present appellant. This assumption which has been drawn by the Tribunal cannot be said to

be a proper inference drawn and the said finding thus deserves to be and is accordingly set aside. Even during the Appeal stage the owner and driver have not been able to produce any such document with which it could have been ascertained whether the vehicle at the relevant time was ensured with the appellant.

8. In view of the aforesaid facts, this court is of the opinion that infact an adverse inference deserves to be drawn against the respondent-owner so far as not having a valid insurance policy at the time of accident.

9. The appeal of the insurance company is thus allowed and the insurance company is exonerated from its liability of payment of compensation. Such liability of payment of compensation is fastened upon the other respondents who were jointly and severally held responsible for the payment of compensation by the Tribunal.

Sd/-

(P. Sam Koshy)
Judge

inder